15 U.S. 496

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RECORD, CASE No. 14,117.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 158.

THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

VICTOR GONZALES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED AUGUST 28, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 28, 1893.

1 THE STATE OF TEXAS, }
County of El Paso. }

At a term of the circuit court of the United States for the western district of Texas, begun and holden at the city of El Paso, El Paso county, State of Texas, on the first Monday, being the 7th day, of April, A. D. 1890, and which adjourned on the 25th day of April, A. D., 1890, the Hon. T. S. Maxey, judge of said district, presiding, the following cause came on for trial, to wit:

VICTOR GONZALES
vs. } No. 96.
THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO.

On the 15th day of November, A. D. 1889, the plaintiff, the said Victor Gonzales, filed in said cause his original petition, which is in words following, to wit:

In the United States Circuit Court for the Western District of Texas, to be held at El Paso, in the State of Texas, on the 7th day of April, A. D. 1890.

To the hon. the judges of the circuit court of the United States for the western district of Texas:

Your petitioner, Victor Gonzales, the plaintiff herein, complaining of The Galveston, Harrisburg and San Antonio Railroad Company, defendant herein, represents that this is a suit between a citizen of the State of Chihuahua, in the Republic of Mexico, and a citizen of the United States of America.

2 That plaintiff is a citizen of the State of Chihuahua, in the Republic of Mexico, and that the defendant is a corporation duly incorporated under the laws of the State of Texas, and is a citizen thereof, operating and running cars on the Galveston, Harrisburg and San Antonio railway track from the city of Houston to the city of El Paso, in the State of Texas, and is a common carrier *for* freight and passengers for hire, and was so operating on the dates hereinafter mentioned, and has and keeps an office and an agent in the said city of El Paso, Texas, for the transaction of its business, and that W. E. Jessup is its local agent in said El Paso.

That the amount in controversy herein exceeds two thousand dollars, exclusive of interest and costs.

That heretofore, to wit, on and prior to the 29th day of July, 1889, and ever since that time the defendant has been engaged in propelling trains and cars on said railway track for the transportation of freight and passengers for hire as aforesaid from the city of Houston, in the State of Texas, into and through the county of Jeff Davis, in said State, and through the county of El Paso into the city of El Paso, Texas; that on or about the 29th day of July, 1889, this plaintiff entered upon one of defendant's said cars, with the consent

of defendant, its servants and agents, attached to a train of defendant's said cars at Valentine station, in Jeff Davis county, in said State of Texas, and paid the sum of seventy-five cents to one of defendant's servants, who was then and there engaged in operating said train, which said amount was accepted by said servant, and defendant, its servants and agents, then and there received plaintiff as a passenger on said train, and then and there agreed with plaintiff to transport him as a passenger on said train for said sum from said Valentine to said city of El Paso; that in a short time after he went of board said train as aforesaid, and while the same was in motion and running at the rate of about fifteen miles per
3 hour, one of defendant's servants, managing said train or assisting in so managing at said time, demanded additional fare of plaintiff, and then and there wrongfully, forcibly, and violently ejected plaintiff from said train while so in motion, and then threw him, this plaintiff, therefrom, thereby causing him to fall upon the ground with such force that his right leg was broken as a result of said fall so received, and causing him to lie eleven hours in a helpless condition, until taken up by others, thereby making plaintiff a cripple for lite and thereby causing him gr-at physical and mental suffering and pain and rendering plaintiff, who was an able-bodied young man, helpless and disabled for life, to his actual damages in the sum of four thousand nine hundred and ninety-nine dollars.

Wherefore plaintiff prays for process and asks that he have judgment against the defendant for the sum of four thousand nine hundred and ninety-nine dollars and all costs of suit.

McGINNIS & McGINNIS &
BENDY & MITCHELL,
Att'ys for Plaintiff.

4 Thereafter, to wit, on the 8th day of April, A. D. 1890, the defendant filed in said cause its answer, which is in words following, to wit:

In the U. S. Circuit Court, West. Dist. Texas, at El Paso.

VICTOR GONZALES
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO. } No. 96.

Now comes the defendant in the above cause, by its attorneys, and appears specially for the purpose of objecting to the jurisdiction of the court and of pleading in abatement, and for no other purpose until the issue raised in said plea be determined, and for such plea in abatement says—

That nevertheless, while it admits that the defendant operates a line of railroad through the county where this suit is pending, and maintains a ticket and freight office and depot, and has an agent on whom process under the laws of Texas may be served there, the said defendant is not an inhabitant of the judicial district in which

the suit is pending; that it is a corporation duly incorporated and existing under the laws of Texas, having its principal office, habitat, and domicil in the city of Houston, Harris county, Texas, and beyond and not within this judicial district, but within the eastern district of Texas. Wherefore said defendant prays judgment whether this court has jurisdiction and will take further cognizance of this suit, and it prays that it may go hence with its costs.

DAVIS, BEALL & KEMP,
Att'ys for Def't.

5 C. W. Hole, as agent for the above-named defendant, makes oath and says that the foregoing plea in abatement to the jurisdiction of the court is true *and* substance and fact.

C. W. HOLE,
Agent for Def't.

Sworn to and subscribed before me this the 8th day of April, A. D. 1890.

[SEAL.] GEO. WYTHE BAYLOR, *Clerk.*

And not in any manner waiving the aforesaid plea to the jurisdiction, but insisting upon the same, the aforesaid defendant, if said plea should not be sustained, answers further as follows:

1.

Said defendant denies that the plaintiff was at the time this suit was brought or that he now is a citizen of Mexico, but alleges that he then was and still is a citizen of the United States and of Texas, and that this is not a suit between citizens of different States. Wherefore defendant prays judgment whether this court has jurisdiction, and whether it will take further cognizance of this suit.

DAVIS, BEALL & KEMP,
For Def't.

2nd.

Said defendant demurs to plaintiff's pleadings and says the same are insufficient in law for plaintiff to recover thereon, and of this it prays judgment of the court.

DAVIS, BEALL & KEMP,
For Def't.

6 3rd.

Further answering. the defendant denies all the plaintiff's allegations and says it is not guilty of the torts and wrongs charged against it, and of this puts itself upon the country.

DAVIS, BEALL & KEMP,
For Def't.

4th.

For further answer, the defendant says that if the plaintiff was in fact injured as he alleges that his own want of care and his own negligence caused and contributed to the same; wherefore he ought not to recover.

DAVIS, BEALL, & KEMP,
For Def't.

5th.

And still further answering, the defendant say that if the plaintiff ever entered defendant's cars and was ejected and injured by defendant's servants, as he alleges, that he was not rightfully on said cars, but there of his own wrong and without the defendant's knowledge or consent; that the said cars were freight cars, used exclusively for the carriage of freight and not of passengers; that by the defendant's reasonable rules and regulations its freight cars and trains were prohibited from carrying passengers, and the plaintiff knew or ought to have known this; that on plaintiff's alleged route defendant's had separate cars and trains for passengers and suitable and proper provision for passenger travel; that defendant did not, habitually or otherwise, permit passengers to travel on its freight cars or trains, but absolutely forbid it, and if in fact any of defendant's servants permitted plaintiff to enter its train and ejected and used him in the manner alleged, such servant or
7 servants acted beyond the scope of their authority, and such acts were not in furtherance of defendant's business; wherefore it ought not to respond, and plaintiff ought not to recover.

DAVIS, BEALL AND KEMP,
Att'ys for Def't.

And on the 19th day of April, A. D. 1890, the said plaintiff, Victor Gonzales, filed in said cause his demurrer to defendant's plea in abatement, which is as follows, to wit:

In the U. S. Circuit Court, Western District of Texas, at El Paso.

VICTOR GONZALES
vs. } No. 96.
THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO.

Now comes the plaintiff and demurs to defendant's verified plea in abatement filed in this cause and, setting up that the defendant is an inhabitant of the eastern district of Texas, says that the same is insufficient in law to constitute a defense in this cause and prays judgment of the court.

McGINNIS & McGINNIS &
BENDY & MITCHELL.

And on the 22nd day of April, A. D. 1890, came on to be heard the above-styled cause, and judgment was entered in the following words, to wit:

VICTOR GONZALES
vs.
8 THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } No. 96.

APRIL 22ND, 1890.

On this day came on to be heard the above-styled cause and the parties appeared by their attorneys, and then came on to be heard the defendant's plea in abatement to the jurisdiction of the court and the exceptions to the same filed by the plaintiff, and the court, having examined said plea and the exceptions thereto and heard the argument of the counsel, is of the opinion that the law is for the plaintiff and that this court has jurisdiction. It is therefore considered by the court that said exceptions be sustained and that the cause may proceed to trial in this court upon the merits; to which ruling and judgment of the court the defendant then and there excepted in open court, and thereupon came a jury of good and lawful men, to wit, James Marr and eleven others, who were duly sworn and empanneled according to law, and who, having heard the evidence, argument of counsel, and charge of the court, returned the following verdict:

VICTOR GONZALES
vs.
THE GALVESTON, SAN ANTONIO AND HARRISBURG RAILWAY COMPANY. } Case No. 96.

We, the jury, find for the plaintiff in the sum of nine hundred dollars.

JAMES MARR, *Foreman.*

It is therefore ordered, adjudged, and decreed that the plaintiff, Victor Gonzales, do have and recover of the defendant, The Galveston, Harrisburg and San Antonio Railway Company, the said sum of nine hundred dollars and interest thereon from this date, at the rate of eight per cent. per annum, together with his costs in this behalf expended; for all which he may have his execution. It is further ordered that execution issue for the use of the officers of court against each party respectively for the costs by him and it in this behalf incurred.

9 And on the 23d day of April the def't filed its motion for a new trial in the words following:

VICTOR GONZALES
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY.

Now comes the defendant in the above cause, by its att'ys, and moves the court to grant a new trial in said cause for the following reasons:

1st.

The court erred in sustaining the pl'ff's exceptions to the defendant's verified plea in abatement and in entertaining jurisdiction and cognizance of the case.

2nd.

The verdict is contrary to the law, against the overwhelming preponderance of the evidence, and is unsupported by the evidence.

DAVIS, BEALL AND KEMP,
Att'ys for Defendant.

On the 23d day of April, 1890, this cause coming on to be heard, judgment on motion for new trial was rendered in the words following, to wit:

VICTOR GONZALES
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO. } No. 96.

This day this cause coming on to be heard and *and* both parties being present by their attorneys, thereupon came on to be heard defendant's motion for a new trial, and the court, having heard the argument of counsel for the defendant, is of the opinion that the same is insufficient.

It is therefore considered by the court that defendant's said motion for a new trial be, and the same is hereby, overruled, and the defendants pay all costs in this behalf expended, for which execution may issue.

And on the 22nd day of April, 1890, the defendant filed its bill of exceptions, which is in words as follows:

In the United States — Court, West. District of Texas, at El Paso.

VICTOR GONZALES
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY. } No. 96.

Be it known that on this the 22nd day of April, 1890, the above cause coming on for trial, the defendant presented its verified plea

in abatement to the jurisdiction of the court as follows, after stating the title of the suit: "Now comes the defendant in the above cause, by its att'ys, and appears specially for the purpose of objecting to the jurisdiction of the court and of pleading in abatement, and for no other purpose until the issue raised *raised* in said plea be determined, and for such plea in abatement says that while it admits that the defendant operates a line of railroad through the county where this suit is pending, and maintains a ticket & freight office and depot and has an agent on whom process under the laws of Texas may be served there, that, nevertheless, the said defendant is not an inhabitant of the judicial district in which this suit is pending; that it is a corporation duly incorporated and existing under the laws of Texas, having its principal office, habitat, and domicile
in the city of Houston, Harris county, Texas, and beyond
11 and not within this judicial district, but within the eastern
district of Texas; wherefore said defendant prays judgmen whether this court has jurisdiction and will take further cognizance of this suit, and it prays that it may go hence with its costs;" which plea was properly signed and verified; and thereupon the plaintiff presented his exceptions to said plea as follows: "Now comes the plaintiff and demurs to defendant's verified plea in abatement filed in this cause and setting up that the defendant is an inhabitant of the eastern district of Texas, and says that the same is insufficient in law to constitute a defense in this cause, and prays judgment of the court;" and this being a suit between the plaintiff, a citizen of Mexico, and the defendant, a corporation under the laws of Texas, and *and* the court being of the opinion, under the admitted facts in said plea (to wit, that, though the defendant's principal office and domicile are in the eastern district of Texas, it operates a line of railroad through, maintains ticket and freight offices and depots and has an agent on whom process may be served, in the district where this suit is pending) that said defendant is an inhabitant of said west. dist. of Texas, the following judgment was rendered by the court:

VICTOR GONZALES
vs.
THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO. } No. 96.

APRIL 22ND, 1890.

On this day came on to be heard the above-styled cause and the parties appeared, by their attorneys, and then came on to be heard the defendant's plea in abatement to the jurisdiction of the court and the exceptions to the same filed by the plaintiff, and the court, having examined said plea and the exceptions thereto and heard
the argument of counsel, is of opinion that the law is for the
12 plaintiff, and that this court has jurisdiction. It is therefore
considered by the court that said exceptions be sustained, and that the cause may proceed to trial in this court upon the merits; to which ruling and judgment of the court the defendant then and there excepted in open court.

And the defendant having then and there in open court tendered this his bill of exceptions, the same is now during the trial of said cause allowed, signed, sealed, and made a part of the record of the cause, and ordered to be filed on this the 22nd day of April, 1890.

T. S. MAXEY, *Judge.*

13 And on the 10th day of May, 1890, the said Southern Pacific Co. filed its writ of error bond, duly approved and with certificate of solvency, as follows:

Supreme Court of the United States.

Know all men by these presents that we, The Galveston, Harrisburg & San Antonio Railway Company, signing this bond by E. P. Hill, its agents, and E. P. Hill, of Houston, Texas, are held and firmly bound unto Victor Gonzales in the full and just sum of two thousand dollars, to be paid to the said Victor Gonzales, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this the 2nd day of May, 1890.

Whereas the above-bound Galveston, Harrisburg & San Antonio Railway Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the circuit court of the United States for the western district of Texas, sitting at El Paso, wherein the said Victor Gonzales, at the April, 1890, term of said court, in cause No. 96, recovered a judgment against the said Galveston, Harrisburg & San Antonio Railway Company for nine hundred dollars, besides interest and costs:

Now, therefore, the condition of this obligation is such that if the above-named Galveston, Harrisburg and San Antonio Railway Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make its plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY,
By E. P. HILL, *Agent.* [SEAL.]
E. P. HILL. [SEAL.]

14 THE STATE OF TEXAS, }
County of Harris. }

I, E. H. Vasmer, clerk of the district court in and for said county, do hereby certify that E. P. Hill and —— ——, whose names appear signed to the annexed bond, are, in my opinion, good and ample security for the amount therein specified; that they have property in said county subject to execution of a larger amount, and that if said bond was offered to me for approval the same would be accepted and approved.

Witness my hand and seal of office, at Houston, Texas, this 2nd day of May, 1890.

[SEAL.]

E. H. VASMER,
Clerk District Court, Harris Co.,
By JO. ANDREWS, *Deputy.*

The foregoing bond is this day approved, May the 7th, 1890.

(Signed) T. S. MAXEY, *Judge.*

15 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the western district of of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Victor Gonzales and The Galveston, Harrisburg & San Antonio Railway Company, a manifest error hath happened, to the great damage of the said Galveston, Harrisburg & San Antonio Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs, of the United States should be done.

The Seal of the U. S. Circuit Court, Western Dist. Texas, El Paso.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 10th day of May, in the year of our Lord one thousand eight hundred and ninety. The seal of said circuit court is hereto affixed.

GEO. WYTHE BAYLOR,
Clerk of the Circuit Court of the U. S. for the West. Dist. of Texas, at El Paso.

Allowed this 7th day of May, 1890.
T. S. MAXEY, *Judge.*

[Endorsed:] 96. E. G., H. & S. A. R'y Co., pl'ff in error, *vs.* Victor Gonzales, def't in error. Writ of error. Filed this the 10th of May, 1890. Geo. Wythe Baylor, clerk of the circuit court of the U. S. for the west. dist. of Texas, at El Paso.

16 In the United States Circuit Court for the Western District of Texas, at El Paso.

I, George Wythe Baylor, clerk of the United States circuit court for the western district of Texas, at El Paso, do hereby certify that on the 22d day of May, 1890, a true copy of the foregoing writ of error was lodged in my office by the plaintiff in error for the adverse party in this case, No. 96, and styled The Galveston, Harrisburg & San Antonio R'y Co., pl'ff in error, *vs.* Victor Gonzales, def't in error, all of which appears from the records of said court now in the clerk's office.

The Seal of the U. S. Circuit Court, Western Dist. Texas, El Paso.

In testimony whereof I hereunto affix the seal of said court at El Paso, Texas, and sign the name of the clerk thereof this 15th day of August, A. D. 1890.

GEO. WYTHE BAYLOR,
Clerk of said Circuit Court,
By ——.——, *Deputy Clerk.*

17 To Victor Gonzales, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court for the western district of Texas, at El Paso, wherein The Galveston, Harrisburg and San Antonio Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error is mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable T. S. Maxey, judge of the said circuit court, this the 7th day of May, in the year of our Lord one thousand eight hundred and ninety.

T. S. MAXEY, *Judge.*

[Endorsed:] 96. G., H. & S. A. R'y Co., pl'ff in error, *vs.* Victor Gonzales, def't in error. Citation in error. Filed this the 10th of May, 1890. Geo. Wythe Baylor, clerk of the circuit court of the U. S. for the west. dist. of Texas, at El Paso.

17½ The attached citation in error came to my hands on the 27th day of May, 1890, and I executed and served the same on said 27th day of May, 1890, by delivering a true and certified copy of the same to U. B. Bendy in person, in the city of El Paso, Texas, the said U. B. Bendy being and his name appearing on the docket as the attorney of record of and for the above-named Victor Gonzales.

ROB. A. ROSS,
Deputy U. S. Marshal.

Sworn to and subscribed before me this the 3rd day of June A. D. 1890.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, El Paso.]

GEO. WYTHE BAYLOR,
Clerk U. S. Ct.

[Endorsed:] No. 96. Victor Gonzales *vs.* The G., H. & S. A. R'y. Citation in error. Returned, served, & filed June 3rd, A. D. 1890. Geo. Wythe Baylor, clerk U. S. C.

18 And thereafter, to wit, on the 19th of July, 1890, the pl'ff in error filed its assignment of error- & prayer for reversal, as follows:

THE GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO., Pl'ff in Error,
vs.
VICTOR GONZALES, Def't in Error.

Now comes The Galveston, Harrisburg & San Antonio R'y Co., plaintiff in error, by its attorneys of record, Davis, Beall and Kemp, and makes the following assignment of errors committed in the proceedings had below:

The court erred in sustaining the plaintiff's exceptions to the defendant's plea in abatement to the jurisdiction of the court, and in taking cognizance of the suit, because jurisdiction was sought alone on the ground that the controversy was between a citizen of a State and a foreign state—the plaintiff a citizen of Mexico and the defendant a citizen of Texas—the said plea to the jurisdiction alleging that the defendant was not an inhabitant of the district where the suit was brought, but was an inhabitant of & had its habitat and domicile in the eastern district of Texas.

GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO.,
By its att'ys of record, DAVIS, BEALL AND KEMP.

And now comes the said Galveston, Harrisburg & San Antonio R'y Co., pl'ff in error, & prays that the judgment rendered against it in the court below be reversed.

GALVESTON, HARRISBURG & SAN ANTONIO R'Y CO.,
By its att'ys of record, DAVIS, BEALL & KEMP.

19 In the United States Circuit Court for the Western District of of Texas, at El Paso.

I, George Wythe Baylor, clerk of the United States circuit court for the western district of Texas, at El Paso, do hereby certify that the foregoing is a full, true, and correct transcript of the papers filed and all the proceedings had, together with the original citation and

writ of error and a copy of the assignment of errors and prayer for reversal filed by the plaintiff in error in case No. 96, and styled on docket of court below Victor Gonzales *vs.* Galveston, Harrisburg and San Antonio Railway Co., all of which appears from the records of said court now in the clerk's office.

The Seal of the U. S. Circuit Court, Western Dist. Texas, El Paso.

In testimony whereof I hereunto affix the seal of said court at El Paso, Texas, and sign the name of the clerk thereof this 15th day of August, A. D. 1890.

GEO. WYTHE BAYLOR,
Clerk of said Circuit Court.
By —— —— *Deputy Clerk.*

[Endorsed:] No. —. United States circuit court, western district of Texas, at El Paso. Galveston, Harrisburg & San Antonio R'y Co., pl'ff in error, *versus* Victor Gonzales, def't in error. Certified copy of the record in the court below for supreme court. Fee, $——.

[Endorsed:] Galveston, Harrisburg & San Antonio R'y Co., pl'ff in error, *vs.* Victor Gonzales, def't in error. From the United States circuit court for the west. district of Texas, sitting at El Paso.

Endorsed on cover: Case No. 14,117. W. Texas C. C. U. S. No. 158. The Galveston, Harrisburg & San Antonio Railway Company, plaintiff in error, *vs.* Victor Gonzales. Filed August 28, 1890.

Office Supreme Court U. S.
FILED.
DEC 11 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

October Term, 1893.—No. 158.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY, Plaintiff in Error,

vs.

VICTOR GONZALES.

In Error to the Circuit Court of the United States for the Western District of Texas.

BRIEF FOR THE PLAINTIFF IN ERROR.

J. HUBLEY ASHTON,
CHARLES H. TWEED,
Counsel for Plaintiff in Error.

McGILL & WALLACE, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1893. NO. 158.

THE GALVESTON, HARRISBURG AND SAN ANTONIO RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

VICTOR GONZALES.

In Error to the Circuit Court of the United States for the Western District of Texas.

Brief for the Plaintiff in Error.

STATEMENT OF THE CASE.

This is a writ of error to a final judgment of the Circuit Court of the United States for the Western District of Texas, at El Paso, rendered on the 22d of April, 1890, in a suit instituted in that court by one Victor Gonzales, alleged to be a citizen of Mexico, against the Galveston, Harrisburg and San Antonio Railway Company, to recover damages to the amount of $4,999 for personal injuries.

The writ of error is sued out under the authority of the Act of February 25, 1889, c. 236, and the error assigned in the record is to the decision of the Circuit Court sustaining a demurrer of the plaintiff to a plea in

abatement to the jurisdiction of that court interposed by the defendant company. (Rec. p. 11).

The petition of the plaintiff, filed on November 15, 1889, is entitled "*in the United States Circuit Court for the Western District of Texas, to be held at El Paso, in the State of Texas, on the 7th day of April, A. D. 1890.*"

It alleged that "this is a suit between a citizen of the State of Chihuahua, in the Republic of Mexico, and a citizen of the United States of America;" and that "plaintiff is a citizen of the State of Chihuahua, in the Republic of Mexico, and the defendant is a corporation duly incorporated under the laws of the State of Texas, and is a citizen thereof, operating and running cars on the Galveston, Harrisburg and San Antonio railway track, from the City of Houston to the City of El Paso, in the State of Texas, and is a common carrier of freight and passengers for hire, and has and keeps an office and an agent in the City of El Paso, Texas, for the transaction of its business, and that W. E. Jesup is its local agent in said El Paso."

The petition further alleged that on and prior to July 29, 1889, and ever since then, the defendant was and has been "engaged in propelling trains and cars on said railway track for the transportation of freight and passengers for hire from the City of Houston, in the State of Texas, into and through the County of Jeff Davis, in said State, and through the County of El Paso, into the City of El Paso, Texas;" that on July 29, 1889, the plaintiff entered upon a train of defendant's cars at Valentine Station, in Jeff Davis County, Texas, and paid seventy-five cents to one of defendant's servants, engaged in operating the train, and defendant, its servants and agents, then and there agreed to transport him as a passenger on the train from said Valentine to said

City of El Paso; and that in a short time after he went on board of the train, and while the same was in motion, one of defendant's servants, managing the train, demanded additional fare of plaintiff, and wrongfully and violently ejected him from the train, causing him to fall upon the ground with such force that his right leg was broken, &c., to his actual damages in the sum of $4,999, for which he asked judgment against the defendant.

The defendant appeared specially and solely for the purpose of objecting to the jurisdiction of the Circuit Court, and filed under oath a plea in abatement to the jurisdiction of the Court, as follows :

"Now comes the defendant in the above cause, by its attorneys, and appears specially for the purpose of objecting to the jurisdiction of the Court, and of pleading in abatement, and for no other purpose, until the issue raised in said plea be determined, and for such plea in abatement, says :

"That, nevertheless, while it admits that the defendant operates a line of railroad through the County where this suit is pending, and maintains a ticket and freight office and depot, and has an agent on whom process, under the law of Texas, may be served there, the said defendant is not an *inhabitant* of the judicial district in which the suit is pending; that it is a corporation duly incorporated and existing under the laws of Texas, having its principal office, habitat, and domicil in the City of Houston, Harris County, Texas, and beyond and not within this judicial district, but within the Eastern District of Texas.

"Wherefore said defendant prays judgment whether this Court has jurisdiction, and will take further cognizance of this suit," &c. (Record, pp. 2, 3.)

The plaintiff demurred or excepted to the plea as follows :

"Now comes the plaintiff and demurs to defendant's verified plea in abatement filed in this cause, and set-

ting up that the defendant is an inhabitant of the Eastern District of Texas, and says that the same is insufficient in law to constitute a defense in this cause, and prays judgment of the Court." (Rec., p. 4, fol. 7.)

Judge Maxey, Judge of the District Court for the Western District of Texas, holding the Circuit Court, was of opinion that the Court had jurisdiction, and it was adjudged by the Court that the plaintiff's exception to the defendant's plea in abatement to the jurisdiction of the Court be sustained, and that the cause might proceed to trial upon the merits. (Rec., p. 5.)

The defendant excepted to the ruling and judgment of the Court (*Ibid.*)

The presiding Judge allowed and signed a bill of exceptions, tendered by the defendant, which, after setting forth the foregoing pleadings, states as follows:

"And this being a suit between the plaintiff, a citizen of Mexico, and the defendant, a corporation under the laws of Texas, *and the Court being of opinion, under the admitted facts in said plea (to wit, that, though the defendant's principal office and domicile are in the Eastern District of Texas, it operates a line of railroad through, maintains ticket and freight offices and depots, and has an agent on whom process may be served in the District where this suit is pending), that said defendant is an inhabitant of said Western District of Texas, the following judgment was rendered by the Court.*" (Rec., p. 7.)

The defendant, without waiving its plea in abatement to the jurisdiction of the Circuit Court, but insisting upon the same, pleaded in its answer to the merits of the case, and after the overruling of the plea to the jurisdiction of the Court, as above stated, the case went to trial before the Court and jury, resulting in a verdict and judgment for the plaintiff in the sum of $900, with interest and costs. (Rec., p. 5.)

The defendant thereupon moved for a new trial upon the ground, among others, that the Court had erred in sustaining the plaintiff's exceptions to the defendant's plea in abatement, and in entertaining jurisdiction of the case. (Rec., p. 6.)

The motion was overruled by the Court.

The defendant then sued out this writ of error to the final judgment of the Circuit Court on the question of jurisdiction only, under the act of February 25, 1889.

Assignment of Error.

The error assigned in the Record is as follows:

"The Court erred in sustaining the plaintiff's exceptions to the defendant's plea in abatement to the jurisdiction of the Court and in taking cognizance of the suit, because jurisdiction was sought alone on the ground that the controversy was between a citizen of a State and a foreign State—the plaintiff a citizen of Mexico, and the defendant a citizen of Texas—the said plea to the jurisdiction alleging that the defendant was not an inhabitant of the District where the suit was brought, but was an inhabitant of, and had its *habitat* and domicile in, the Eastern District of Texas."

Points of Argument.

First.

This Court has jurisdiction and authority to review the ruling of the Circuit Court, embodied in the bill of exceptions, upon the question of the jurisdiction of that Court over this case, presented by the plaintiff's demurrer or exception to the defendant's plea in abatement.

1. The legislative history of the Act of February 25, 1889, chap. 236, shows, as we had the honor to observe on a previous occasion, that the enactment was spe-

ting up that the defendant is an inhabitant of the Eastern District of Texas, and says that the same is insufficient in law to constitute a defense in this cause, and prays judgment of the Court." (Rec., p. 4, fol. 7.)

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1. The legislative history of the Act of February 25, 1889, chap. 236, shows, as we had the honor to observe on a previous occasion, that the enactment was spe-

cially designed to reserve to this tribunal the right to finally determine questions involving the jurisdiction of the Circuit Courts under the grant of jurisdiction to those Courts contained in the then recent provisions of the Act of Congress approved March 3, 1887, c. 373, as corrected by the Act of August 13, 1888, c. 866.

The object of the statute was to insure the correct and uniform interpretation of the new legislation defining the jurisdiction of the Circuit Courts, and confine those Courts, in the exercise of their powers, within the limits fixed thereby, through the action of this tribunal.

The Act of 1889 accordingly provided that in any case in a Circuit Court of the United States in which there shall have been a question involving the jurisdiction of the Court, the party against whom the final judgment or decree is rendered shall have the right to a writ of error or appeal to this Court to review such judgment or decree without reference to the amount of the same; "but in cases where the decree or judgment does not exceed the sum of five thousand dollars the Supreme Court shall not review any question raised upon the record except such question of jurisdiction." (25 Stat., 693.)

2. This Court has adjudged, upon full consideration, that the provisions of the Texas statutes which give to a special appearance, made to challenge the Court's jurisdiction, the force of a general appearance, so as to confer jurisdiction over the person of the defendant, are not binding upon the Federal Courts in that State, under the rule of procedure prescribed by section 5 of the Act of June 1, 1872, as reproduced in Rev. Stat., § 914.

Southern Pacific Co. *v.* Denton, 146 U. S., 202;
Mexican Central Railway *v.* Pinkney, 149 U. S., 194.

3. There can be no doubt, therefore, that the question whether under the Act of March 3, 1887, c. 373, the Circuit Court below had jurisdiction of this case is a question involving the jurisdiction of that Court, which this Court is empowered, by the act of February 25, 1889, to review by the present writ of error.

SECOND.

The Circuit Court of the United States for the Western District of Texas had no jurisdiction over this case, and its action in assuming jurisdiction and proceeding to trial on the merits, was erroneous, if the plaintiff in error, at the time the suit was brought, was "AN INHABITANT" *of the Eastern Judicial District of the State of Texas, and was not* "AN INHABITANT" *of the Western Judicial District of that State, within the meaning of the Act of March 3, 1887, c. 373, § 1, as corrected by the Act of August 13, 1888, c. 866.*

1. The Judiciary Act of 1887, after providing "that the Circuit Courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars * * * in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid * * * or a controversy between citizens of a State and foreign States, citizens or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid," declares as follows :

"But no person shall be arrested in one District for trial in another in any civil action before a Circuit or District Court; and *no* civil suit *shall be brought* before

either of said Courts against *any* person by *any* original process or proceedings *in any other District* than that whereof he is an INHABITANT, *but* where the jurisdiction is founded only on the fact that the action is between citizens of different States suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

24 Stat., 552; 25 Stat., 434.

The preceding Act of March 3, 1875, c. 137, § 1, after giving the Circuit Court jurisdiction of suits between citizens of different States, and of suits in which there shall be "a controversy between citizens of a State and foreign States, citizens or subjects," substantially reenacted the corresponding provision of the Act of September 24, 1879, c. 20, § 11, by declaring that no civil suit should be brought "against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, *or in which he shall be found at the time of serving such process or commencing such proceeding*," with certain exceptions not important to be here noticed. (18 Stat., 470.)

The Act of 1887, both in its original form, and as corrected in 1888, "having taken away the alternative permitted in the earlier acts, of suing a person in the District '*in which he shall be found*,'" as this Court has observed, requires an action at law, the jurisdiction of which is founded only upon its being between a citizen or subject of a foreign country and a citizen of a State, to be brought in the District whereof the defendant is an "inhabitant." (Southern Pacific Company *v.* Denton, 146 U. S., 205.)

This Court has adjudged repeatedly that the last clause of the first section of the Act of 1887, quoted above, is by way of *proviso* to the next preceding clause, which forbids any suit to be brought in any other District than that whereof the defendant is an inhabitant;

and the effect is that "where the jurisdiction is founded upon any of the causes mentioned in that section, *except* the citizenship of the parties, it *must* be brought in the District of which the defendant is an inhabitant; but where the jurisdiction is founded solely upon the fact that the parties are citizens of different States, the suit may be brought in the District in which either the plaintiff or the defendant resides." (McCormick *v.* Walthers, 134 U. S., 41, 43; Shaw *v.* Quincy Mining Company, 145 U. S., 444, 449.)

2. It is not to be doubted, we apprehend, under the doctrines and decisions of this Court that corporations created by and organized under the laws of a particular State, are within the designation of "citizens" of the State, as the term is used in that provision of the act of March 3, 1887, sec. 1, 373, which confers upon the Circuit Courts original cognizance of civil suits in which there shall be "a controversy between citizens of a state and foreign states, citizens, or subjects," and that where the jurisdiction is founded solely upon the fact that the plaintiff is an alien and the defendant is a corporation chartered by and doing business in a particular state, and thus a citizen of that state, within the meaning of the provision of the act of 1887 referred to, the suit must be brought in the Circuit Court of the United States for the District in which the defendant is an "inhabitant."

The act of 1887 no longer allows the corporation defendant, in such a case, to be sued in a District of the charter State in which it was "*found*," as under the previous judiciary acts of the United States, but peremptorily requires that the suit shall be brought in the District whereof the corporation is an "inhabitant."

No Circuit Court can entertain jurisdiction of any suit which Congress declares shall *not be brought* in the

where transfers of stock shall be made, where the auditor, treasurer, general traffic manager, and general superintendent of such roads, or where an agent of such corporation duly authorized to adjust and settle all claims against such corporation for damages shall have their respective offices, and where shall be kept for inspection of the stockholders of such corporation books in which shall be recorded:

1st. The amount of capital stock subscribed;

2d. The names of the owners of the stock, and the amounts owned by them respectively;

6th. The names and places of residence of each of its officers; provided, that a railroad corporation shall be required to keep such office at some place on the line of its road in this State.

ART. 4116. All meetings of stockholders and directors of such corporation shall be held at such public office, and all transfers of stock in such corporation shall be made at such office, and the general business of such corporation shall be transacted at such office.

ART. 4118. Every railroad corporation may change at its pleasure its public office by publishing a notice of such change in some newspaper published on the line of its road, if any there be, and if not, then in some newspaper in the State, and having a general circulation in the State, for four successive weeks prior to such change.

ART. 4119. Every railroad corporation shall, also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

ART. 4120. The public office of a railroad corporation shall be considered the *domicile* of such corporation. (2 Sayles' Texas Civil Statutes, Articles 4115, 4116, 4118, 4120.)

The "public office" of a railroad corporation is otherwise referred to and designated as its "*principal office*," in those provisions of the Revised Statutes of Texas which relate to the service of process in suits against railroad corporations and other incorporated companies. (1 Sayles' Texas Civil Stat., Articles 1195, subd. 21; 1223; 63 Texas, 581; 52 Texas, 587.)

Article 1195 provides that "no person who is an inhabitant of this State shall be sued out of the *county* in which he has his *domicile* except in the following cases, to-wit: * * * § 21. Suits against any private corporation may be commenced in any county in which the cause of action or part thereof arose, or in which such corporation has an agency or representative, or in which its *principal office* is situate. And suits against a railroad corporation, or against any assignee, trustee or receiver, operating its railway, may be brought in any county through or into which the railroad of such corporation extends or is operated."

Article 1223 provides: "In suits against any incorporated company, the citation may be served on the President, Secretary, or Treasurer of such company, or upon the local agent representing such company in the county in which suit is brought, or by leaving a copy of the same at the *principal office* of the company during office hours."

It is adjudged that there is no authority of law for making service of process in a suit against a railroad company at any office of the corporation other than its principal or public office, unless the service be made *on* the local agent representing the company in the county in which the suit is brought. (H. & T. C. R'y Co. *v.* Hill, 63 Texas, 381.)

3. The effect of these provisions of the statutes of Texas unquestionably is that the *habitat*, domicil or home of a railroad corporation, chartered by the State, is fixed in the town and county in which its principal or public office is established, although it may be found for the purposes of suit in a State court in any county through which its road runs, and in which it has a local agent on whom process can be served.

Agreeably to the law of Texas, therefore, the plaintiff

in error is to be deemed an inhabitant of Harris County, in the Eastern District of Texas, and not an inhabitant of El Paso County, in the Western District of that State.

By the Statutes of the State, the corporation is located and its domicil is fixed in the county of Harris, in which its principal office is maintained by it, and it is thus constituted an "inhabitant" of that county within the meaning of the Act of 1887.

4. The opinion of Judge Maxey in the reported case of *Zambrino* v. *Galveston, H. & S. A. R'y Co.* (38 Fed. Rep., 449), stated the grounds upon which he adjudged that the defendant was an "inhabitant" of the Western District of Texas, and as such suable by an alien in the Circuit Court for that District.

The conclusion of the learned judge was a part of the view to which he gave his judicial adherence, that a corporation of one State doing business by its agents in another State in which it had not been incorporated, was an inhabitant of the latter State, and might be sued in a Circuit Court held therein by a citizen of a different State.

This view of the law was not accepted by this Court when the question finally came before it, and the contrary was adjudged by it, in the leading case of *Shaw* v. *Quincy Mining Company* (145 U. S., 446), and in the subsequent case of *Southern Pacific Company* v. *Denton.* (146 U. S., 202, 205.)

It is now settled law, contrary to the view of the Court below, that a corporation cannot, for the purposes of a suit where the jurisdiction is founded on the fact that the action is between citizens of different States, be considered a citizen or an inhabitant or a resident of a State in which it has not been incorporated.

5. It follows from the doctrines of this Court that a Texas railroad corporation, as a citizen of Texas, for the

purposes of a suit, by an alien, in a Circuit Court of the United States, under the Act of 1887, must be deemed to be an "inhabitant" only of the judicial District in which its principal or public office is kept under the law of the state.

The fact that its road extends into another District, and it has agents there for the transaction of its corporate business, does not constitute it, agreeably to the principles of the recent judgments of this Court, an inhabitant of that District.

Neither the citizenship nor the inhabitancy or domicil of the corporation as such, is legally determined or tested by the territory or territorial jurisdiction in which it may do business and have agents or representatives.

For the purposes of suit, it is a "citizen" of the State in which by law it was created and organized, and a local "inhabitant" of the judicial District in which, by or under the authority of the law of the State, its public or principal office is established.

The corporation may do business beyond the District of its legal residence, but that fact does not change or affect its *habitat* or domicil, but simply extends and defines the field of its operations. It resides at home in the District where its head office is, and does business in another jurisdiction.

Unlike a natural person, it can not change its domicil at will, and although it may transact business, and exercise its faculties, in a District other than that in which it has its domicil, under the governing statutes, it can not on that account acquire a residence there.

Such we understand to be the effect of the decisions of this Court in the cases involving the construction and operation of the Act of March 3, 1887, as corrected in 1888, recently determined by it.

6. It may be observed further that the rule by which, for the purposes of the jurisdiction of the Circuit

Court, the individual stockholders of a State corporation are presumed to be "citizens" of the charter State, requires that such stockholders should be conclusively presumed to be "inhabitants" of the place in the State in which the public office of the corporation is maintained, and the corporation thus has its domicil. (Marshall *v.* B. & O. R. R. Co., 16 How., 314–328; Shaw *v.* Quincy Mining Co., 145 U. S., 451.)

The members of the corporation, who, by a legal theory, or fiction, if you will, introduced for the purposes of jurisdiction, are conclusively presumed to be citizens of the State in which the corporation is domiciled, must, for the same purposes, be conclusively deemed to reside, as local inhabitants, in the place which the law fixes as the residence and domicil of the corporation, and the "centre of its existence."

The presumption arising from the *habitat* of a corporation in the State of its creation being conclusive as to the citizenship of its members, must be also conclusive as to the inhabitancy of those who use the corporate name, and exercise the faculties conferred by it, in the District in which the domicil of the corporation is established by or under authority of law.

An allegation that the defendants are a body corporate under the laws of the State of Texas, would, in fact, amount to an averment that the real defendants were citizens of that State, and inhabitants and residents of the District thereof in which the principal office of the corporation is maintained by it.

As supposed citizens of the State by which the corporation was created, the members of the corporation must be deemed, for the purposes of the jurisdiction of a Circuit Court of the United States, to have a domicil, and the same domicil, in the charter State, and that domicil must, for those purposes, be deemed to be in the County and District of the State in which the resi-

dence and domicil of the corporation as such is fixed by law.

7. It is clear, therefore, that the plaintiff in error, whose public or principal office, under the law of Texas, is in the City of Houston, in the County of Harris, Texas, is an "inhabitant" only of the Eastern District of Texas, in the meaning of the Act of 1887, and that the Circuit Court of the United States for the Western District of that State had no jurisdiction to entertain this suit.

FOURTH.

The act of March 3, 1887, evidently intended that a corporation incorporated by a State should be deemed for the purposes of suit an "inhabitant" only of the District in that State in which it has its domicil or situs by the law of the State, or in which by or under the authority of its charter it has its "principal office," and that it should not be subject to the jurisdiction and power of the Circuit Court of the United States held in another District of that State in a suit brought by an alien or by a citizen of a different State.

1. The act declares that *no suit shall be brought* before a Circuit Court against "any person" in any other District than that whereof he is an "inhabitant," except that where the jurisdiction is founded solely upon diverse citizenship, the suit may be brought in the District whereof either the plaintiff or the defendant is an inhabitant.

The phrase "district of the residence" of a person is equivalent to "district whereof he is an inhabitant." (Shaw *v.* Quincy Mining Co., 145 U. S., 449.)

Inhabitancy, under the statute, relates to and is predicated of a particular judicial District, and involves the idea or fact of *domicil* or permanent residence.

It has been said that domicil is the legal conception of residence, and the two words differ only as in all sciences common words, on becoming technical, are limited in meaning for the sake of precision. (Westlake, Private Int. Law, 30.)

The statute includes, within the designation of *persons* and *inhabitants*, both natural and artificial persons, and there is no reason, as the Court has said, for giving it a looser construction as to artificial persons than as to natural persons. (Shaw *v.* Quincy Mining Co., 145 U. S., 453.)

As to a natural citizen of a State, there can be no doubt that, within the meaning of the act, he is and can be an inhabitant or resident only of the District in which he is *domiciled*.

With respect to an artificial or juridical citizen of a State, it seems equally clear that the act requires that it should be deemed, for the purposes of jurisdiction, to be an inhabitant or resident only of the District of the State in which it has it domicil by law, or maintains its principal office.

Neither a natural person nor an artificial person can be an "inhabitant," at one and the same time, of every judicial District of the State, of which he or it is a citizen, when it contains more than one such District; and the act does not contemplate, in any case, such a thing as two domicils or a double domicil; least of all in the case of a corporation, which must, for the purposes of jurisdiction, have one *situs* or *domicil* in analogy to the domicil which an individual has in fact.

2. The Act of 1887 is properly subject to strict construction in its application to the ideal existence or entity called a corporation, and the inhabitancy attributed to it, for the purposes of jurisdiction, is to be limited and confined to the place which is recognized

as its residence and domicil by the law governing the corporation.

The policy of the Act of 1887, both as to individuals and corporations, was to restrict the jurisdiction to the forum at the *home* or *domicil* of the party to be affected by suit, and this it did by absolutely prohibiting the bringing of any civil suit, at law or in equity, against any person in any District whereof the defendant was not an "inhabitant," with the single exception, mentioned in the *proviso* to the clause referred to, and, in that case, one of the parties must be an inhabitant of the District where the suit is instituted, to warrant the Court in exercising jurisdiction over the case.

The Act in this regard is mandatory in all its provisions.

The purpose of the Act was to preserve in its integrity the general common law rule that a defendant, whether a natural or an artificial person, ought to be sued only where the party lived, to the exclusion of the territorial jurisdiction in which he or it might be found.

By the general rule, process against a corporation must be served on its head or principal officer within the jurisdiction where the artificial body is deemed by law to reside. (McQueen *v.* Middleton Co., 16 Johns., 5; Middlebrooks *v.* Ins. Co., 14 Conn., 300.)

The effect of the limitation upon the jurisdiction of the Circuit Courts, contained in the Act of 1887, clearly is to require that a corporation, sought to be subjected to the power of one of those Courts, as a citizen of the State, shall be sued in the Circuit Court held in the Judicial District of the State in which the principal office of the corporation is established by law, and whose process in the suit may be served upon the proper officer representing the corporation at its principal office.

By no other construction, we submit, can due effect

be given in this regard to the general object of the Act, which was, as this Court has often said, to contract and restrict the jurisdiction of the Circuit Courts of the United States in respect both to natural and artificial persons.

3. This Court, speaking by Chief Justice Waite, observed: "A corporation may for the purposes of suit be said to be born where by law it is created and organized, and to reside where by or under the authority of its charter its principal office is." (Railroad Company *v.* Koontz, 104 U. S., 12.) This is the general doctrine of the common law which holds that a corporation should be constituted of some *place*, and that a private corporation must be deemed to reside in the town where its *principal office* is, as a local inhabitant. (Angell and Ames on Corporations, *secs.* 103–107.)

When, by the statutes of the State which created the corporation, the principal office of the company is made its domicil, the place of residence of the corporation, assigned to it by law, is the place where its principal or public office is established, and the corporation is to be deemed a local inhabitant of that place. Where a corporation is not in terms located by the provisions of the governing statute, or its charter, the principles of law applicable to the subject require that for the purposes of jurisdiction the corporation should be deemed to reside, as a local inhabitant, in the place in the State of incorporation where it maintains its principal office. That is the place which is the centre of the company's existence, and which should be deemed, therefore, its legal domicil for jurisdictional purposes.

These principles have been recognized and applied by judicial decisions in well-considered cases.

The case of *Lyman Company* v. *Southard* (12 Blatch-

ford, 405,) was a suit for the infringement of a patent in the Circuit Court of the United States for the Northern District of New York by a corporation incorporated by the State of New York, whose principal office was located in the city of New York, and it was adjudged, upon a motion to compel the company to file security for costs, that the plaintiff resided in the Southern District of New York, and was not a resident of the Northern District of the State. Judge Wallace, in disposing of the motion, and holding that the plaintiff resided beyond the jurisdiction of the Circuit Court for the Northern District of New York, applied the principle that the residence of a private corporation must be deemed to be in the place where its principal office, as the official exhibition of its local existence, is established and maintained.

The same principle was recognized by the Circuit Court of the United States for the Northern District of Illinois in *Gormully, &c., Manuf. Co.* v. *Pope Manuf. Co.* (34 Fed. Rep., 818), where Judge Blodgett said :

"It seems to me a corporation must be held to be an '*inhabitant*' of the place where it has its principal place of business, where its corporate offices and records are kept, and its corporate meetings are lawfully held. A corporation, like an individual, may have agents representing it in a District of which it is *not an inhabtant;* and no reason is perceived why it can be sued outside of the District where its principal corporate business is done by service on its agent, which would not allow an *individual* to be so sued. And if a natural person, charged with the infringement of a patent, can only be sued in the District of which he is an inhabitant, I can see no good reason why a corporation is not entitled to the same protection under this law. * * * Waiving the question whether a corporation can be a citizen or inhabitant of any State except that from which it has obtained its corporate rights and existence, it is quite clear to me that it can not be a

citizen or *inhabitant* of more than *one* place; and although the bill states that this defendant does business in this District, that cannot make the corporation an *inhabitant of the District so long as its principal offices are elsewhere.*"

The subject was considered by the Supreme Court of New Jersey in the case of *Thorn* v. *Central Railroad Company* (2 Dutcher, 121), and it was there held that in a suit brought against a railroad corporation, the *venue* should be laid in the county where its principal office was located, that being considered its place of residence, in the meaning of the statutes. In that case the corporation ran its railroad and exercised its franchises both in Essex County and Somerset County, but its principal office was in the former county, while the suit was brought in the latter, and upon a motion to change the *venue* the Court held that the corporation must be deemed to be a resident of Essex County, and the *venue* should be changed to that county. The learned Court said :

"It was held in *Louisville Railroad Co.* v. *Letson* (4 How., 555), that a corporation created by a State is to be considered, though an artificial person, an *inhabitant* of the State in which it performs its functions, and for the purpose of suing and being sued, a citizen of that State. The only question is, whether a railroad corporation can be said to *reside*, within the meaning of the Act of the Legislature, *in as many counties as it happens to traverse with its road*, or whether, if it can properly be said to have any residence, that residence is not to be taken to be in the county where it keeps its principal office of business. * * * The point in question here has not been ruled in this State. But the course of legislation on the subject of corporations would indicate that they are to be considered as having a residence where their office or place of business is located. * * * In the absence of any rule prescribed, there would seem to be a propriety in holding

that, for the purpose of laying the *venue*, the principal office or place of business of a corporation is technically *the place of residence of the corporation.* Ordinarily, its books are there; its directors and executive officers meet and transact its business there. Its residence may certainly be with more propriety said to be there than in any other place; and it would seem to be incongruous to hold that it is an inhabitant of the State, that it is *not* a non-resident, and yet has no residence in the the State. The argument that a corporation resides wherever it exercises its franchises, may, perhaps, be applicable to a case where it has not established a technical residence by locating its place of business within the State. In this case we think the defendant must be held to be a corporation *resident in Essex County*, and that the *venue*, therefore, should be changed to that county."

The question as to the residence of a railroad corporation was carefully considered, in the light of the general principles of jurisprudence, applicable to the subject, by the Supreme Court of Vermont, in the case of the *Connecticut, &c., Railroad Company* v. *Cooper* (30 Vermont, 476), where the rule was declared that, when a corporation is not located by the terms of its charter, its residence and location are regarded as being in the place where it keeps its principal office, and does its corporate business. The fact that the railroad runs through another county, was regarded as unimportant, and not constituting a residence of the corporation. *The railroad is the property of the corporation; but it is not the corporation.*

The Court said:

"It seems to us that the fact that the business of a railroad corporation extends throughout its road, no more defeats its locality or *situs* being determined by the *place of its principal business office*, than in the case of other corporations, more or less analogous. * * * If their charter fixes no locality, they are regarded as hav-

ing their *situs* in the place of their principal office, at the centre of their business operations. And it seems to us beyond all question that from the course of decisions, as well as legislation, and the general convenience of business, the same rule should be applied in determining the *situs* of a railway Company."

The theory, in general, of the District Judge, in the Court below, that a corporation is carried bodily into every place in which it does business, by agents, and is thus constituted a local resident or inhabitant of such place, is unsupported by the principles of the law of corporations, which inculcate the doctrine, as recognized by this Court, that a corporation, as a creature of law, is not and can not be the migratory and ubiquitous being, supposed by the learned Judge, but is an entity to which the law assigns a residence and domicil analogous to that which an individual has, in fact, at the particular place which is the centre and seat of its existence and operations.

The term "inhabitant," in this Statute, is not employed in any loose, untechnical, or unscientific sense in its intended application either to a corporation or a natural person, but is used as a term of legal art descriptive of a person, natural or artificial, who has, in fact, or in contemplation of law, an established *home* at a particular place of residence. (Board of Supervisors *v.* Davenport, 40 Ill., 197; Bartlett *v.* City of New York, 5 Sandford, 44; Lee *v.* City of Boston, 2 Gray, 484.)

A corporation does not and can not migrate, or change its home, or domicil, by the use and exercise of its faculties and franchises, in other places and different jurisdictions, but it *exists*, is *resident*, is *present*, as an inhabitant, at the one spot where by authority of law or its charter it has established and maintains its principal office for its corporate business.

As the real defendants in a suit against a State

corporation are natural persons who are uncertain and unknown, it is impossible without the aid of this rule, in support of the Federal jurisdiction, to ascertain whether or not the Court in any case dependent upon citizenship has jurisdiction over the parties.

As has been observed, a corporation, for the purposes of the Federal jurisdiction, is the representative of the individuals who compose it, and it is their citizenship which is regarded as determining the jurisdiction, the law conclusively presuming that they are citizens of the charter State, and no other State. And it must be conclusively presumed also that the corporators are inhabitants of some one District of the State, and some one place in that District, for otherwise it would be impossible to determine whether or not the Court has jurisdiction over the natural persons who are represented by the corporation for judicial purposes

For the purpose and as the basis of such presumption, the locality of the corporation as such must be fixed, and in the nature of things no other locality can be assigned to it than the place at which it has its principal or public office for its corporate business.

The presumption, therefore, is that the stockholders are inhabitants of that place, and of the District in which that place is situated, and not inhabitants of any other place and District. The question of jurisdiction thus relates to the character of the corporators as citizens and inhabitants of the District wherein suit is sought to be brought, and that question must and can only be determined by the conclusive presumption of law which has been indicated.

But if the inhabitancy of the corporation itself as such is to be considered the test of jurisdiction, it must be said, as we have maintained, that, in the contemplation of the Act of 1887, it is an inhabitant of the place

corporation and natural persons who are [illegible]
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The presumption, therefore, is that [illegible]
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But if the inhabitant [illegible] itself as
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be said, as we have [illegible] contempla-
tion of the Act of 188[illegible] inhabitant of [illegible]

of its principal corporate office, at which process may be served on the corporation by service on its proper representative there.

In that view, as we have said, what is to considered is the place of the proper *domicil* of the corporation.

"Inhabitancy" and "residence" are not always convertible and identical terms. Residents of may have no domicil within a State. An individual may reside or have a residence at a place which is not his permanent home, and of which he is not an "inhabitant." He may have a home or domicil in one State, and at the same time a residence in another State.

The term "inhabitant" implies, in general, in its application to a natural person, a more fixed and permanent abode than "resident," and frequently imports many privileges and duties which a mere resident could not claim or be subject to. (Board of Supervisors *v.* Davenport, 40 Ill., 197.)

If it be granted, therefore, that a corporation could be said to "reside" in every place in the charter State in which it does business and has agents, the concession would be nothing to the point, for the point is of what place and district must the corporation be said to be an "*inhabitant;*" what place is the *domicil* or *home* of the corporation, as such, for the purposes of jurisdiction under the act of 1887.

The question would be the same if the word "*inhabitant*" is not used in any larger meaning than "*citizen*" in that act. If the former word is used in the act with the same extent of meaning as the latter, then it is clear that it imports the fact of *domicil* or *home*, and not mere residence, for, as the court has said, it has been held by it from the beginning that an allegation that a party *resided* in the State or district in which suit was brought did not support the jurisdiction, as it did not show that the party was necessarily a citizen of the State.

In any view of the proper interpretation and effect of the word "inhabitant," as applied to a corporation, it refers to a corporation who is *domiciled* in the particular district in which a suit is sought to be brought, whose corporate *home* is within the territorial limit of that judicial district.

It has been conclusively adjudged that for many purposes a corporation has a certain and fixed domicil, and the rule of decision seems to be that when it is important that the place where a corporation resides should be known, its domicil will be regarded as fixed at the place in which its principal office is located under authority of law.

Pelton *v.* Transportation Co., 37 Ohio St., 450.
Western Transportation Co. *v.* Schen, 17 N. Y., 508.

These cases declare that there are obvious reasons why it is expedient that a corporation should be deemed to have a domicil for many purposes, and that this domicil should be ascertained by its principal office for the management of its business.

The rule may well be stated to be that a corporation is domiciled in, and an "inhabitant" of, the Judicial District wherein the process of the Circuit Court may be served upon the Company at its head or principal office.

The Circuit Court of each District sits within and for that District, and is bounded by its local limits.

Whatever may be the extent of their jurisdiction over the subject-matter of suits in respect to persons and property, it can only be exercised within the limits of the District. (Toland *v.* Sprague, 12 Pet., 328; Galpin *v.* Page, 18 Wall., 367.)

A corporation is an "inhabitant" of that District within the limits of which the process of the Circuit

Court therein may be served upon the appropriate officer at the "principal office" of the corporation.

4. These principles, conformable as they are to the doctrines of the common law, may be supposed to have been in the mind of Congress, when it framed the Act of 1887, and in that view it can not well be thought that Congress intended that the rule as to the domicil of a corporation being the place of its principal office in the State by which it was chartered, should be ignored or disregarded, and that a corporation should be subject to suit in every District of its State, in which it did business by agents, as "an inhabitant" of each such District, without regard to the locality or *situs* of its principal office or place of business.

On the contrary, it is clear that construing the Act with reference to the ascertained intention of Congress to *curtail and cut down* the jurisdiction of the Circuit Courts, it must be supposed that Congress distinctly meant that the rule as to the domicil of a State corporation should be applied in giving effect to the Act, and that such a corporation should be allowed to sue and to be sued, in one of those Courts, only as a citizen and inhabitant of the District of its State, in which it maintained, under authority of law, or its charter, its public or principal office.

It is difficult, if not impossible, to see how a different intention can be imputed to Congress, without disregarding the well known and general object and purpose of the act to restrict and diminish the jurisdiction of the Circuit Courts.

If a State corporation may sue and be sued, as a citizen and inhabitant, in each and every District of its State in which it carries on its business, the act of 1887 has effected no change in the jurisdiction of the Circuit Courts, so far as such corporations are concerned, while

it has succeeded in restricting the jurisdiction of those Courts in all cases in which natural persons are parties.

An individual, in his own State, may sue a citizen of another State, and may be sued by a citizen of another State, only in the District in which he is a domiciled inhabitant; but a corporation, if it be deemed to be an "inhabitant" of every District of its State in which it carries on its business, may sue a citizen of a different State, and may be sued by a citizen of a different State, in each and every District of its State in which it does business by its agents under its charter.

Such a result was never intended by Congress, and the construction of the act which leads to it must be rejected, if any other construction is possible.

5. The construction and effect given to the Act of 1887 by the Court below are rendered possible, it would seem, only by forcibly reading back into the Act, by interpolation, the old words, "or in which he shall be *found* at the time," &c., which were carefully omitted from the new Act when it was framed by Congress.

It was by the effect of this "found" clause, in the framework of the previous Judiciary Acts, that a State corporation was suable in a District of the charter State other than that in which it had its principal office and place of business, and in which it had agents on whom process might be served under the local law of the State.

The general right which was given by those Acts to sue a corporation, as well as an individual, in a District whereof the defendant was an "inhabitant," or in which it or he might be "found," &c., subjected a corporation to the jurisdiction of the Circuit Court in every District of the charter State in which the company had a place of business and agents who could be served with legal process.

If Congress intended anything by the omission of this "found" clause from the new Act, it intended